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### Maintaining Power Over the Ballot Box and Our Bodies: The Nineteenth Amendment's Impact on Women's Right and Access to Reproductive Healthcare

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# Maintaining Power Over the Ballot Box and Our Bodies: The Nineteenth Amendment's Impact on Women's Rights and Access to Reproductive Healthcare

*Brittany L. Raposa\**

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## I. INTRODUCTION

Over the last 100 years, women have fought for equality on numerous fronts and have broken many barriers. Passed by Congress in 1919, the Nineteenth Amendment reads, "The right of citizens of the United States to vote shall not be denied or

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abridged by the United States or by any State on account of sex.”<sup>1</sup> The recognition of a woman’s right to vote is frequently credited for the increased presence of women in education, in the work force, or in male-dominated positions. However, little is discussed about how “[t]he 19th Amendment played a pivotal role in promoting reproductive rights for women, ushering in a new voting population with a political agenda that would ultimately legalize contraception and abortion.”<sup>2</sup> Thanks to the Nineteenth Amendment, “[w]omen also experienced economic progress . . . with the increased availability of family-planning services and supplies allowing more women to enroll in higher education and enter professional occupations.”<sup>3</sup> With the continued development of women entering schools and businesses, there became a need for leadership in certain areas—most notably, in reproductive health and family planning.<sup>4</sup>

The passage of the Nineteenth Amendment shifted a woman’s role from caretaker to college graduate and career starter. This was evidenced fairly quickly because “[w]ithin 20 years of the [Nineteenth] [A]mendment’s passage, federal courts had undermined the contraception provision of the Comstock Law of 1873 . . . and the American Medical Association adopted birth control as a normal medical option.”<sup>5</sup> Many more advancements were made, such as when “[t]he FDA approved the pill in 1960, and governmental policies such as Title X made it affordable for more women.”<sup>6</sup> Further, “the *Roe v. Wade* decision in 1973 legalized abortion.”<sup>7</sup> As women started to feel more comfortable in their new roles, they began to make decisions that changed the trajectory of their lives. Ultimately, “[t]he increasing availability of family-planning services and supplies resulted in more women delaying marriage, graduating from higher education at higher rates, and entering into more professional [and male-dominated] occupations.”<sup>8</sup> Women gained a sense of

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1 U.S. CONST. amend. XIX.

2 Heidi Williamson, *Women’s Equality Day: Celebrating the 19th Amendment’s Impact on Reproductive Health and Rights*, CTR. FOR AM. PROGRESS (Aug. 26, 2013, 4:41 PM), <http://www.americanprogress.org/issues/women/news/2013/08/26/72988/womens-equality-day-celebrating-the-Nineteenth-amendments-impact-on-reproductive-health-and-rights/> [<http://perma.cc/3VT9-SLY7>].

3 *Id.*

4 Jacqueline Pelella, *The Vote & the Right to Access Contraception*, POWER TO DECIDE (Mar. 25, 2019), <http://powertodecide.org/news/vote-right-access-contraception> [<http://perma.cc/6XHS-SZAC>] (“Reproductive health and family planning became the top policy issue for advocates to take on in the second wave as more women went to college and entered the work force full-time.”).

5 Williamson, *supra* note 2.

6 *Id.*

7 *Id.*

8 *Id.*

power over the ballot box, and consequently, over their futures. One question, however, always remains: do women retain control over their bodies?

The advancements that came with the Nineteenth Amendment did not come without difficulty—particularly for women of color. “For African American women, suffrage was a way to empower themselves and lift up the African American community.”<sup>9</sup> “The concerns of African American women differed from those of white women because only African American women had to worry about discrimination based on both gender and race.”<sup>10</sup> As a result, “African American women did not enjoy the reproductive access and economic mobility that white women did after 1920.”<sup>11</sup> Many activists at the time believed that birth control could assist the African American community in the fight for racial and economic equality, and reduce the tremendous maternal and infant mortality rates.<sup>12</sup> The fight for equality and control over reproductive health care for women of color was (and still is) a difficult journey, which ultimately gave rise to the Reproductive Justice Movement in 1994.

The Nineteenth Amendment reads parallel with the definition of “reproductive justice,” which is, “the human right to maintain personal bodily autonomy, have children, not have children, and parent the children we have in safe and sustainable communities.”<sup>13</sup> The ability for a woman to maintain personal bodily autonomy, to have or not have children, and to parent children in safe and sustainable communities, depends largely on a woman’s right to vote.<sup>14</sup> The Nineteenth Amendment not only birthed a new movement for women, but it also created a shift from a woman’s *right* to reproductive health care to a woman’s *access* to reproductive health care. As discussed in this Article, the Nineteenth Amendment indirectly created a right to reproductive healthcare. Now, women are able to fight for access to “contraception, comprehensive sex education, STI prevention and care, alternative birth options, adequate prenatal and pregnancy care, domestic violence assistance, adequate wages to support [] families, safe homes, and so much more.”<sup>15</sup>

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Reproductive Justice*, SISTERSONG, <http://www.sistersong.net/reproductive-justice> [http://perma.cc/6D2Z-9FVE] (last visited Feb. 26, 2020).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

Currently, reproductive rights face a large threat from nearly all levels of government. Therefore, the power of the Nineteenth Amendment in giving women the right to vote effectively gives women the ability to help decide whether they will retain power over their bodies. Now, more than ever, it is imperative to analyze how the Nineteenth Amendment and a woman's right to vote impact a woman's reproductive rights, and how the Nineteenth Amendment birthed the current reproductive justice movement.

This Article will retrospectively analyze how the Nineteenth Amendment allowed women to help elect progressive policymakers, who in turn enacted policies to benefit women. Further, this Article argues that the Nineteenth Amendment should be recognized as a predominant factor in today's reproductive justice movement.

First, this Article will discuss the state of women's reproductive rights and healthcare prior to the passage of the Nineteenth Amendment. Second, this Article will retrospectively analyze the Nineteenth Amendment's impact on women's rights and access to reproductive healthcare. Next, this Article will analyze how the Nineteenth Amendment impacted the case law surrounding women's reproductive health, giving rise to women's reproductive rights. Finally, this Article will analyze how the Nineteenth Amendment gave birth to the current reproductive justice movement, allowing women to no longer focus on reproduction as a right, but instead on proper access to quality and equal care.

## II. WOMEN'S REPRODUCTIVE HEALTHCARE PRIOR TO THE NINETEENTH AMENDMENT

### A. Women and Family Planning

Prior to the passage of the Nineteenth Amendment, women did not have the right to vote because it was ultimately seen as unnecessary—the choices of women were held by the male heads of households. In the early nineteenth century, men dominated the commercial, political, and professional realms, while women were confined solely to domestic duties. The law supported this gender divide: “Women generally could not serve on a jury, as a justice of the peace, or as a notary public,” and in many jurisdictions, women were not permitted to practice law.<sup>16</sup> Prior to 1920, and perhaps throughout most of the twentieth century,

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<sup>16</sup> Sandra Day O'Connor, *The History of the Women's Suffrage Movement*, 49 VAND. L. REV. 657, 658 (1996).

women had two primary roles—housewife and mother.<sup>17</sup> A woman’s husband assumed all legal rights for her upon marriage, including the right to make personal decisions.<sup>18</sup> Women had a lack of choice, especially when it came to having children, as women were expected to have as many children as their bodies allowed.<sup>19</sup> The traditional notion of family with the woman as a childrearer was heavily rooted in policy and politics, as “President Theodore Roosevelt succinctly expressed . . . that a white Protestant woman who avoided pregnancy was ‘a criminal against the race.’”<sup>20</sup>

Women began the fight for their right to choose in the nineteenth century, as exemplified by the first birth control movement in the latter part of that century.<sup>21</sup> Women suffragists endorsed this movement, and suggested that women should not only have a right to choose whether to become pregnant, but also a right to choose to decline having sexual intercourse with their husbands.<sup>22</sup>

When the United States was founded, abortion was not regulated.<sup>23</sup> An increase in abortion access was attributed to the importance of females experiencing “their own bodies.”<sup>24</sup> In the 1820s and 1830s, states began passing legislation regulating the sale and consumption of abortifacients, drugs “which often killed the women who took them.”<sup>25</sup> During the mid-nineteenth century, women utilized birth control and abortion, but these practices were not socially acceptable and oftentimes had to be obtained illegally.<sup>26</sup> In addition, “[t]he Comstock Law, passed by Congress in 1873, made it a crime to send through the mails any contraceptives, any information about contraceptives, or any

<sup>17</sup> See Herma Hill Kay, *From the Second Sex to the Joint Venture: An Overview of Women’s Rights and Family Law in the United States During the Twentieth Century*, 88 CAL. L. REV. 2017, 2019 (2000).

<sup>18</sup> See *id.* at 2021.

<sup>19</sup> A *History of Birth Control Methods*, PLANNED PARENTHOOD 14 (2012), [http://www.plannedparenthood.org/files/2613/9611/6275/History\\_of\\_BC\\_Methods.pdf](http://www.plannedparenthood.org/files/2613/9611/6275/History_of_BC_Methods.pdf) [<http://perma.cc/3BJD-JDJR>].

<sup>20</sup> *Id.*

<sup>21</sup> See *id.* at 2.

<sup>22</sup> See Reva B. Siegel, *Sex Equality Arguments for Reproductive Rights: Their Critical Basis and Evolving Constitutional Expression*, 56 EMORY L.J. 815, 819 (2007).

<sup>23</sup> See LESLIE J. REAGAN, WHEN ABORTION WAS A CRIME: WOMEN, MEDICINE, AND LAW IN THE UNITED STATES, 1867–1973 8 (1997).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 10.

<sup>26</sup> See Erin Blakemore, *The Criminalization of Abortion Began as a Business Tactic*, HISTORY (May 15, 2019), <http://www.history.com/news/the-criminalization-of-abortion-began-as-a-business-tactic> [<http://perma.cc/4XE2-HJ8H>]; see also Meryl Davids Landau, *Birth Control in America: A Brief History of Contraception*, EVERYDAYHEALTH (July 6, 2018), <http://www.everydayhealth.com/birth-control/contraception-birth-control-women-america/> [<http://perma.cc/H559-QUVC>].

information about how to find out about contraceptives,” making it impossible for individuals to control their family size.<sup>27</sup> Violators of the Comstock Laws faced one to ten years of hard labor, potentially in combination with a fine.<sup>28</sup>

The Comstock Laws created an anti-birth control and anti-abortion climate, and as a result, women were not educated nor provided information on sexual and reproductive healthcare.<sup>29</sup> “A 1916 study . . . in New York by the Metropolitan Health and Life Insurance Company . . . revealed that one fourth of its claims were puerperal related.”<sup>30</sup> In addition, a 1917 survey “of immigrants on New York’s Lower East Side . . . determine[d] that about a third knew of no birth control methods at all, other than abortion . . . .”<sup>31</sup> Even women who sought proper medical treatment were not adequately advised of their reproductive healthcare needs, as nurses and healthcare providers were restricted in their ability to discuss contraception.<sup>32</sup>

Individual states began to strictly limit abortions. “In 1821, Connecticut became the first state to criminalize abortion, followed by New York seven years later.”<sup>33</sup> And by the end of the nineteenth century, most states banned abortion, with the only exception being those abortions medically necessary to save the mother’s life.<sup>34</sup> Though these statutes restricted women’s access to abortions, the regulations originally “targeted those who performed abortions rather than the pregnant women who sought to have them” and were designed to protect women and their fetuses.<sup>35</sup> However, one of the most prominent issues was that this newly enacted legislation did not eliminate women’s needs or desires to have an abortion.

Most alarming is the reproductive health and harm that was done prior to women gaining a fundamental right over their

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27 Mary L. Dudziak, *Just Say No: Birth Control in the Connecticut Supreme Court Before Griswold v. Connecticut*, 75 IOWA L. REV. 915, 918 (1990). A Connecticut law, which followed the Comstock Law, banned any type of birth control or related information because it was deemed “obscene” in nature. *See id.* at 920 n.41.

28 *Id.* at 918.

29 *See id.*

30 ELLEN CHESLER, *WOMAN OF VALOR: MARGARET SANGER AND THE BIRTH CONTROL MOVEMENT IN AMERICA* 64 (1992).

31 *Id.*

32 *See id.* at 63.

33 *From Roe to Stenberg: A History of Key Abortion Rulings by the Supreme Court*, PEW RES. CTR. (Jan. 17, 2008), <http://www.pewforum.org/2008/01/17/from-roe-to-stenberg-a-history-of-key-abortion-rulings-by-the-supreme-court/> [<http://perma.cc/ZWD9-LEJD>].

34 *See History of Abortion in the U.S., OUR BODIES OURSELVES*, <http://www.ourbodiesourselves.org/health-info/u-s-abortion-history> [<http://perma.cc/N5GB-HECC>] (last updated May 18, 2018).

35 *From Roe to Stenberg: A History of Key Abortion Rulings by the Supreme Court*, *supra* note 33.



reproductive choices. “The vast majority of women who found themselves facing the dilemma of an unwanted pregnancy could not afford either to leave the country [to obtain an abortion] or to pay a physician to perform an illegal abortion in the United States.”<sup>36</sup> Therefore, women engaged in self-induced or “back-alley” abortions.<sup>37</sup> After receiving such abortions, many women died, and those who survived suffered permanent damage to their bodies.<sup>38</sup> Women took control of their bodies, but at a tremendously high price while fighting for equality:

Women who resorted to self-induced abortions typically relied on such methods as throwing themselves down a flight of stairs or ingesting . . . or inserting into themselves a chilling variety of chemicals and toxins. . . . Knitting needles, crochet hooks, scissors, and coat hangers were among the tools commonly used by women who attempted to self-abort. Approximately 30 percent of all illegal abortions . . . were self-induced. . . . Women who sought “back-alley” abortions were often blindfolded, driven to remote areas, and passed off to people they did not know and could not even see. . . . Such abortions were performed not only in secret offices and hotel rooms, but also in bathrooms, in the backseats of cars, and literally in back alleys. . . . [T]hese abortions were performed either by persons with only limited medical training, such as physiotherapists and chiropractors, or by . . . elevator operators, prostitutes, barbers, and unskilled laborers. In the 1960s, an average of more than 200 women died each year as a result of botched illegal abortions. The mortality rate for black and Hispanic women was twelve times higher than the mortality rate for white women.<sup>39</sup>

Before the Nineteenth Amendment, this was the unfortunate reality for many women who wished to establish power over their own bodies or have any role in family planning.

## B. The Birth of the Birth Control Movement

The women’s fight for reproductive healthcare began before the passage of the Nineteenth Amendment and was ultimately fought alongside the movement for women’s right to vote. In 1914, a newspaper, *The Woman Rebel*, used the phrase “birth control” for the first time and sparked the existence of a birth

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<sup>36</sup> GEOFFREY R. STONE, *SEX AND THE CONSTITUTION: SEX, RELIGION, AND LAW FROM AMERICA’S ORIGINS TO THE TWENTY-FIRST CENTURY* 358 (1st ed. 2017).

<sup>37</sup> REAGAN, *supra* note 23, at 210–11 (“Physicians and nurses at Cook County Hospital saw nearly one hundred women come in every week for emergency treatment following their abortions. Some barely survived the bleeding, injuries, and burns; others did not.”).

<sup>38</sup> See WHEN ABORTION WAS ILLEGAL: UNTOLD STORIES (Concentric Media 1992), [http://concentric.org/films/when\\_abortion\\_was\\_illegal.html](http://concentric.org/films/when_abortion_was_illegal.html) [<http://perma.cc/VVP6-BPQQ>].

<sup>39</sup> Sarah Rogers, *What Life Was Like for American Women in America Before ‘Roe v. Wade,’* DAILY BEAST (July 10, 2018, 5:06 AM), <http://www.thedailybeast.com/heres-what-life-was-like-for-american-women-in-america-before-ro-e-v-wade> [<http://perma.cc/3QKE-PDVA>].

control movement, and thus a reproductive rights movement.<sup>40</sup> The term was coined by Margaret Sanger and other radical advocates behind *The Woman Rebel*.<sup>41</sup> “Birth control” was a revolutionary term and challenged societal notions of what it means to be a woman.

Not only did Sanger lead the birth control movement, but she and other free-thinkers banded together to shed light on the class injustice that resulted from a restriction on birth control information.<sup>42</sup> In her work, she noted that “lower income women lack[ed] preventative health care options . . . [and] also could not afford abortions and [therefore] were more likely to engage in riskier at-home procedures.”<sup>43</sup> Openly discussing these issues in *The Woman Rebel*, Sanger “was arrested in 1914 for mailing obscenity under the Comstock definition, and faced a forty-five year jail sentence.”<sup>44</sup> She then “wrote a book on birth control entitled ‘*Family Limitation*,’” and subsequently fled to England to avoid prosecution under the Comstock Laws.<sup>45</sup>

When Sanger returned to the United States after the charges against her were dropped in 1916, she opened the first contraceptive clinic, which dispensed contraceptives to immigrant women from a storefront in Brooklyn.<sup>46</sup> Although it was only open for ten days due to a shut down after a sting operation, the clinic assisted 464 women in its short time.<sup>47</sup> In 1918, the New York Court of Appeals upheld a subsequent prosecution of Sanger for her work in the clinic, despite reading into the statute a narrow exception which allowed doctors to prescribe contraceptives to married persons to prevent disease.<sup>48</sup> Notwithstanding this exception, doctors were the only individuals who were protected, and any other person providing information about contraception could still be prosecuted under the law.<sup>49</sup> As almost all doctors were male, the law was still being applied in a gendered context that was not for the benefit of women.<sup>50</sup>

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<sup>40</sup> PETER C. ENGELMAN, A HISTORY OF THE BIRTH CONTROL MOVEMENT IN AMERICA 23–24 (2011).

<sup>41</sup> *Id.*

<sup>42</sup> *See id.*

<sup>43</sup> Sarah Primrose, *The Attack on Planned Parenthood: A Historical Analysis*, 19 UCLA WOMEN'S L.J. 165, 178 (2012).

<sup>44</sup> *Id.* at 179.

<sup>45</sup> *Id.* at 179–80.

<sup>46</sup> CHESLER, *supra* note 30, at 149–50.

<sup>47</sup> *See id.* at 150–51.

<sup>48</sup> Dudziak, *supra* note 27, at 919.

<sup>49</sup> *See id.*

<sup>50</sup> Marjorie Heins, *A Birth-Control Crusader: “The Sex Side of Life”—Mary Ware Dennett’s Pioneering Battle for Birth Control and Sex Education*, ATLANTIC (Oct. 1996),

### III. THE NINETEENTH AMENDMENT'S IMPACT ON WOMEN'S REPRODUCTIVE RIGHTS

#### A. Changing the Societal Landscape

Following the passage of women's suffrage, many politicians and policy makers wished to pursue the reproductive goals of women in a variety of ways.<sup>51</sup> Many developments raised fundamental questions about the interactions between sex, citizenship, and race. First, immigration policies were enacted in order to exert some type of control over reproduction. For example, "[t]he Immigration Act of 1924, also called the National Origins Act, . . . aimed to radically reduce non-Nordic immigrants and thereby curtail the number of 'inferior' children born in the United States as American citizens."<sup>52</sup> The law imposed serious implications on citizens, which included requiring "visas and photographs for all immigrants . . . [and] Congress mandat[ing] a 'scientific' study of the origins of the population as of 1920 to use as a guide for future allowable quotas by nationality and ethnicity."<sup>53</sup> This law and subsequent regulations similar to it had a severe impact.

Second, the Great Depression of the 1930s sparked an agenda to curb fertility.<sup>54</sup> "Women were extraordinarily resourceful, getting information and supplies from a variety of new sources" out of sheer necessity and desire.<sup>55</sup> Despite the efforts of women for bodily autonomy, the political climate still focused on population control and attempted to give men control over women's bodies.<sup>56</sup> Although "the American Medical Association endorsed birth control as a 'proper sexual practice,' the organization insisted that doctors retain authority over

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<http://www.theatlantic.com/magazine/archive/1996/10/a-birth-control-crusader/376695/>  
[<http://perma.cc/BJ9K-T86H>].

<sup>51</sup> LORETTA J. ROSS & RICKIE SOLINGER, REPRODUCTIVE JUSTICE: AN INTRODUCTION 31 (2017).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 31–32.

<sup>54</sup> *Id.* at 33.

<sup>55</sup> *Id.*

[Women] gathered in labor union settings and in maternity and infant centers for African Americans in the South. In Oklahoma, a coalition of fourteen Black women's clubs underwrote a clinic. In San Francisco, school-teacher Jane Kwong Lee took Chinese women to the Planned Parenthood clinic, she said, so they could get birth control before they got pregnant. Women opened their homes to door-to-door contraceptive salesmen. Many purchased preparations at five-and-dime stores, ordered "preventatives" from the Sears and Roebuck catalog, and responded to magazine advertisements.

*Id.*

<sup>56</sup> *Id.*

women's access" to such contraceptives.<sup>57</sup> Further, as public health officials and eugenicists wanted to make the population more white, they "developed birth control clinics for poor African American[]" women in an attempt to control the quality of the population.<sup>58</sup> Indeed, Congress in 1930 allowed the distribution of condoms, but only to men in uniform to protect against venereal diseases.<sup>59</sup> Although winning the right to vote gave women some more power, their reproductive choices were still being controlled by the hands of men.

Third, the development of federal programs to aid poor mothers and their children were the final policy implementations that impacted women during this time. "The Sheppard-Towner Act of 1921, which established the first federally funded social welfare program in the United States," was created to care for children in an "era of massive immigration."<sup>60</sup> It is not surprising that "[w]hite feminist activists fervently supported this legislation . . . because it provided services such as infant and maternity care for the poor and pre- and postpartum education for pregnant women."<sup>61</sup> Women of color, however, were given inferior services under this program.<sup>62</sup> Therefore, the trend continued—special value was given to white mothers and their families, while devaluing the maternity and children of women of color and different ethnic backgrounds.

"[I]n 1935 . . . the government initiated Aid to Dependent Children (ADC) as part of the Social Security Act, [but] the program excluded children of 'immoral' unmarried mothers and most women of color."<sup>63</sup> Under the ADC, "[w]hite mothers received help if they promised they would stay home and take care of their children, even during . . . World War II."<sup>64</sup> However, "women of color were forced to go to work no matter their maternal responsibilities."<sup>65</sup> Thus, contraceptives were available and aid was given to some mothers, but still at the control of white men.

Shortly after, "[i]n 1942, . . . the American Birth Control League changed its name to Planned Parenthood," making a significant change within the mission of the organization.<sup>66</sup>

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<sup>57</sup> *Id.*

<sup>58</sup> *See id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 36.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 37.

<sup>65</sup> *Id.*

<sup>66</sup> Dudziak, *supra* note 27, at 919.

Rather than characterizing birth control as a way to liberate women, the organization moved towards a focus on “family planning.”<sup>67</sup> It became clear that the birth control movement was shifting from a woman’s right to choose to an emphasis on family decisions. Even after the women’s suffrage movement, women were still faced with laws and regulations forcing them to continue to live within the confines of traditional notions of what it meant to be a woman.

## B. The Reproductive Rights Wave After Suffrage

Beginning in the 1950s, female sexuality and fertility were the two issues at the forefront of United States politics. In the late 1960s, it was “reproductive rights” at the forefront.<sup>68</sup> “In 1960, the Federal Drug Administration approved the first birth control pill for contraceptive use.”<sup>69</sup> The Supreme Court’s decision in *Griswold v. Connecticut* dismantled the old Comstock Laws, decriminalizing contraception and declaring birth control as a matter of marital “privacy.”<sup>70</sup> Later in 1971, the first case about abortion in the Supreme Court arose in *United States v. Vuitch*.<sup>71</sup> In *Vuitch*, a doctor challenged the constitutionality of a District of Columbia law permitting abortion only in situations necessary to preserve a woman’s life or health.<sup>72</sup> The Court rejected the claim that the statute was unconstitutionally vague, concluding that “health” should be understood to include considerations of psychological health and physical well-being.<sup>73</sup> Just one year later in *Eisenstadt v. Baird*,<sup>74</sup> “the Supreme Court struck down a Massachusetts law limiting the distribution of contraceptives to married couples whose physicians had prescribed them.”<sup>75</sup>

The cases decided between 1960 and 1972 were small victories for women, as they gained more access to contraceptives and obtained slightly more control over their right to choose. The biggest victory came in 1973 when the Supreme Court decided *Roe v. Wade*.<sup>76</sup> In *Roe*, “a Texas law prohibiting all but lifesaving

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<sup>67</sup> See *id.*

<sup>68</sup> See generally Francine H. Nichols, *History of the Women’s Health Movement in the 20th Century*, 29 J. OBSTETRIC, GYNECOLOGIC & NEONATAL NURSING 56 (2000).

<sup>69</sup> Kay, *supra* note 17, at 2048.

<sup>70</sup> See *Griswold v. Connecticut*, 381 U.S. 479, 485–86 (1965).

<sup>71</sup> See *United States v. Vuitch*, 402 U.S. 62, 66 (1971).

<sup>72</sup> See *id.* at 63, 67–68.

<sup>73</sup> See *id.* at 71–72.

<sup>74</sup> 405 U.S. 438 (1972).

<sup>75</sup> *Timeline of Important Reproductive Freedom Cases Decided by the Supreme Court*, ACLU, <http://www.aclu.org/other/timeline-important-reproductive-freedom-cases-decided-supreme-court> [<http://perma.cc/97AN-8439>] (last visited Mar. 8, 2020).

<sup>76</sup> 410 U.S. 113 (1973).

abortions” was challenged.<sup>77</sup> “The Supreme Court invalidated the law on the ground that the constitutional right to privacy encompasses a woman’s decision whether or not to terminate her pregnancy.”<sup>78</sup> The case was monumental, as it represented the Court finally “[c]haracterizing this right as ‘fundamental’ to a woman’s ‘life and future,’” in holding “that the state could not interfere with the abortion decision unless it had a compelling reason for regulation.”<sup>79</sup> What were the parameters of a compelling reason or interest? The Court stated that “[a] compelling interest in protecting the potential life of the fetus could be asserted only once it became ‘viable,’” which typically happened “at the beginning of the last trimester of pregnancy.”<sup>80</sup> Even when a state did have a compelling interest in protecting the potential life of the fetus at this later stage in pregnancy, “a woman had to have access to an abortion if it were necessary to preserve her life or health.”<sup>81</sup>

In the same year, the Supreme Court decided “*Roe*’s companion case, *Doe v. Bolton*,<sup>82</sup> in which the Supreme Court overturned a Georgia law regulating abortion.”<sup>83</sup> It was a crucial decision, as “[t]he law prohibited abortions except when necessary to preserve a woman’s life or health or in cases of fetal abnormality or rape.”<sup>84</sup> Not only did the Georgia law limit the instances in which an abortion would be permitted, but it also limited where an abortion could be carried out by requiring “that all abortions be performed in accredited hospitals and that a hospital committee and two doctors in addition to the woman’s own doctor give their approval” for the abortion.<sup>85</sup> The Court ultimately ruled “the Georgia law unconstitutional because it imposed too many restrictions” on a woman’s fundamental right to an abortion “and interfered with a woman’s right to decide, in consultation with her physician, to terminate her pregnancy.”<sup>86</sup>

The case law in support of abortion, and specifically a woman’s right to choose, continued in the years after *Roe*. In 1975, the Supreme Court decided *Bigelow v. Virginia*,<sup>87</sup> where it “ruled that states could not ban advertising by abortion clinics

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<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> 410 U.S. 179 (1973).

<sup>83</sup> *Timeline of Important Reproductive Freedom Cases Decided by the Supreme Court*, *supra* note 75.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> 421 U.S. 809 (1975).

[as s]uch bans violate the First Amendment's guarantees of freedom of speech and freedom of the press."<sup>88</sup> Four years later, the Supreme Court heard *Bellotti v. Baird*,<sup>89</sup> where "[t]he ACLU represented plaintiffs challenging a Massachusetts statute requiring women under 18 to obtain parental or judicial consent prior to having an abortion."<sup>90</sup> In that case, "[t]he Court found the statute unconstitutional because . . . it gave either a parent or a judge absolute veto power over a minor's abortion decision, no matter how mature she was and notwithstanding that an abortion might be in her best interests."<sup>91</sup> Taking into consideration a woman's right to choose, the Court in "*Baird* established that all minors must have the opportunity to approach a court for authorization to have an abortion, without first seeking the consent of their parents, and that these alternative proceedings must be confidential and expeditious."<sup>92</sup> While the decision still prompted a woman to seek permission, it was nonetheless a step forward in the fight for justice.

The 1980s also saw a rise in female reproductive rights case law. The Supreme Court, in *Harris v. McRae*,<sup>93</sup> "rejected a challenge to the Hyde Amendment, which banned the use of federal Medicaid funds for abortion except when the life of the woman would be endangered by carrying the pregnancy to term."<sup>94</sup> This case proved to be critical because "[a]lthough the lawsuit . . . was unsuccessful, the ACLU and its allies" began the fight against "many state funding bans."<sup>95</sup> In 1983, the ACLU had two major victories for the campaign promoting a women's right to choose. In *City of Akron v. Akron Center for Reproductive Health*,<sup>96</sup> "the Supreme Court struck down all of the [sic] challenged provisions of an Akron, Ohio, ordinance restricting abortion."<sup>97</sup> In addition, in *Bolger v. Youngs Drug Products Corporation*,<sup>98</sup> "[t]he ACLU . . . challenge[d] . . . a federal law that made it a crime to send unsolicited advertisements for

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<sup>88</sup> *Timeline of Important Reproductive Freedom Cases Decided by the Supreme Court*, *supra* note 75.

<sup>89</sup> 443 U.S. 622 (1979).

<sup>90</sup> *Timeline of Important Reproductive Freedom Cases Decided by the Supreme Court*, *supra* note 75.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> 448 U.S. 297 (1980).

<sup>94</sup> *Timeline of Important Reproductive Freedom Cases Decided by the Supreme Court*, *supra* note 75.

<sup>95</sup> *Id.*

<sup>96</sup> 462 U.S. 416 (1983).

<sup>97</sup> *Timeline of Important Reproductive Freedom Cases Decided by the Supreme Court*, *supra* note 75.

<sup>98</sup> 463 U.S. 60 (1983).

contraceptives through the mail.”<sup>99</sup> The *Bolger* decision implicated another essential right in the fight for a woman’s right to choose—the right to free speech. In *Bolger*, “[t]he Supreme Court held the law to be unconstitutional because it violated the First Amendment’s protection of ‘commercial speech’ and impeded the transmission of information relevant to the ‘important social issues’ of family planning and the prevention of venereal disease.”<sup>100</sup> This case shed light on the Supreme Court’s recognition that abortion affects many facets of a woman’s life, both present and future.

The 1990s sparked some of the most notable reproductive rights case law. In *Rust v. Sullivan*,<sup>101</sup> “[t]he ACLU represented Dr. Irving Rust and other family planning providers who challenged the Reagan Administration’s ‘gag rule’ barring abortion counseling and referral by family planning programs funded under Title X of the federal Public Health Service Act.”<sup>102</sup> This gag rule was especially detrimental to women because “[u]nder the new rule, clinic staff could no longer discuss all of the options available to women facing unintended pregnancies, but could only refer them for prenatal care.”<sup>103</sup> Even in light of the fact that this rule would “reverse[] . . . years of policies that had allowed non-directive, comprehensive options counseling, the Court upheld” the law.<sup>104</sup> Although “President Clinton rescinded the ‘gag rule’ by executive order shortly after his inauguration in 1993,”<sup>105</sup> the Court’s decision to uphold the law set the forward movement of women’s reproductive rights slightly back.

In 1992, the Supreme Court decided *Planned Parenthood of Southeastern Pennsylvania v. Casey*,<sup>106</sup> where “the Court preserved constitutional protection for the right to choose” from the *Roe* case.<sup>107</sup> However, the Court “adopted a new and weaker test for evaluating restrictive abortion laws. Under the ‘undue burden test,’ state regulations can survive constitutional review so long as they do not place a ‘substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus.’”<sup>108</sup>

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<sup>99</sup> *Timeline of Important Reproductive Freedom Cases Decided by the Supreme Court*, *supra* note 75.

<sup>100</sup> *Id.*

<sup>101</sup> 500 U.S. 173 (1991).

<sup>102</sup> *Timeline of Important Reproductive Freedom Cases Decided by the Supreme Court*, *supra* note 75.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> 505 U.S. 833 (1992).

<sup>107</sup> *Timeline of Important Reproductive Freedom Cases Decided by the Supreme Court*, *supra* note 75.

<sup>108</sup> *Id.*



In 2000, the Supreme Court decided *Stenberg v. Carhart*,<sup>109</sup> where “the ACLU filed a . . . brief calling on the Court to invalidate Nebraska’s . . . ‘partial-birth abortion’ ban.”<sup>110</sup> The Supreme Court sent a strong message and invalidated “Nebraska’s law on two independent grounds: the ban’s failure to include a health exception threatened women’s health, and the ban’s language encompassed the most common method of second-trimester abortion, placing a substantial obstacle in the path of women seeking abortions and thereby imposing an ‘undue burden.’”<sup>111</sup>

In 2007, in *Gonzales v. Carhart*<sup>112</sup> and *Gonzales v. Planned Parenthood Federation of America, Inc.*,<sup>113</sup> “the [Supreme] Court upheld the federal ban” against partial-birth abortions.<sup>114</sup> This ruling “undermin[ed] a core principle of *Roe v. Wade*: that women’s health must remain paramount. In so doing, the Court essentially overturned its decision in *Stenberg v. Carhart* [where] . . . the majority . . . evoked antiquated notions of women’s place in society and called in to question their decision-making ability.”<sup>115</sup> Most notable in the decision, Justice Kennedy wrote “that in the face of ‘medical uncertainty’ lawmakers could overrule a doctor’s medical judgment and that the ‘State’s interest in promoting respect for human life at all stages in the pregnancy’ could outweigh a woman’s interest in protecting her health.”<sup>116</sup>

While the Supreme Court did not always rule in favor of women’s choice, the cases evidenced a strong and continuous fight for women’s reproductive rights, which in turn created a foundation for the women’s movements of today.

#### IV. A SHIFT FROM REPRODUCTIVE RIGHTS TO REPRODUCTIVE JUSTICE: THE RIGHT TO VOTE IS A REPRODUCTIVE JUSTICE ISSUE

The current political climate and happenings in women’s reproductive health have made a woman’s right to vote more powerful than ever. Today, the topic of abortion is at the center of women’s reproductive health. The availability of abortion in the

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<sup>109</sup> 530 U.S. 914 (2000).

<sup>110</sup> *Timeline of Important Reproductive Freedom Cases Decided by the Supreme Court*, *supra* note 75.

<sup>111</sup> *Id.*

<sup>112</sup> 550 U.S. 124 (2007).

<sup>113</sup> *Id.*

<sup>114</sup> *Timeline of Important Reproductive Freedom Cases Decided by the Supreme Court*, *supra* note 75.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

United States varies tremendously between states.<sup>117</sup> In certain states, abortion is freely available—even in later stages of pregnancy.<sup>118</sup> In other states, laws regulating abortion can be so restrictive as to violate the Supreme Court’s prohibition on undue burdens established in *Casey*—which is particularly notable given the 2019–2020 political climate.<sup>119</sup> This section analyzes the connection between the right to vote and a woman’s reproductive rights, and argues that the right to vote is ultimately a reproductive justice issue.

#### A. Connecting Reproductive Justice and the Right to Vote

Our country’s history has been told through narratives and experiences, as various groups within later generations align themselves with the moral victories of earlier generations. Both pro-life and pro-abortion activists, for example, align themselves with the suffragists who helped ratify the Nineteenth Amendment.<sup>120</sup> “[M]any early anti-abortion activists in the 1960s and ‘70s saw themselves as advocates for women’s rights, too.”<sup>121</sup> This may be attributed to an earlier moment in the women’s suffrage movement. Prominent figures in this movement were “Elizabeth Cady Stanton, the 19th-century architect of the suffrage movement, and Susan B. Anthony, her co-reformer,” who both belonged to an anti-abortion advocacy group.<sup>122</sup> In their newspaper, *The Revolution*, they “published unsigned articles describing abortion as ‘child murder’ and ‘infanticide.’”<sup>123</sup> However, pro-abortion activists claim that “Stanton supported ‘voluntary motherhood,’ an idea that shares intellectual roots with the movement for abortion rights.”<sup>124</sup> Pro-abortion activists also argue that the abortion debate was not at the forefront during the women’s suffrage movement, as the focus was access to the polls and not access to abortion.<sup>125</sup> Despite the debated differences between the women suffragists and the progressive

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<sup>117</sup> See Timothy Stoltzfus Jost, *Rights of Embryo and Foetus in Private Law*, 50 AM. J. COMP. L. 633, 633–34 (2002).

<sup>118</sup> See, e.g., *An Overview of Abortion Laws*, GUTTMACHER INST. (Mar. 1, 2020), <http://guttmacher.org/state-policy/explore/overview-abortion-laws> [<http://perma.cc/J6S4-K6J4>].

<sup>119</sup> *Id.*

<sup>120</sup> Emma Green, *The Epic Political Battle Over the Legacy of the Suffragettes*, ATLANTIC (June 4, 2019), <http://www.theatlantic.com/politics/archive/2019/06/abortion-debate-and-legacy-womens-suffrage/590422/> [<http://perma.cc/J574-5MAK>].

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

women of today, there exists one strong link between the two: “[A] long-standing, universal notion of *justice*.”<sup>126</sup>

What is reproductive justice? “Reproductive justice is a contemporary framework for activism and for thinking about the [entire] experience of reproduction.”<sup>127</sup> However, reproductive justice is more than just a framework—“[i]t is also a political movement that splices *reproductive rights* with *social justice* to achieve *reproductive justice*.”<sup>128</sup> The reproductive justice movement is premised on “three primary principles: (1) the right *not* to have a child; (2) the right to *have* a child; and (3) the right to *parent* children in safe and healthy environments.”<sup>129</sup> The goal, therefore, of reproductive justice is to give all people “a safe and dignified context for these most fundamental human experiences.”<sup>130</sup> However, “[a]chieving this goal depends on access to specific, community-based resources including high-quality health care, housing and education, a living wage, a healthy environment, and a safety net for times when these resources fail.”<sup>131</sup> Reproductive justice built upon what prominent figures of the women’s suffrage movement had been advocating for, simply with a new focus.

The reproductive justice movement does not solely focus on reproduction as a woman’s right. It instead looks at reproductive health from every experience, taking multiple factors into account such as class, race, gender, sexuality, health status, and access to healthcare. According to reproductive justice leaders, “Reproductive Justice is achieved when women, girls, and individuals have the social, economic, and political power and resources to make healthy decisions about our bodies, sexuality and reproduction for ourselves, our families, and our communities.”<sup>132</sup> Reproductive justice, then, depends on the political power to vote.

For women suffragists, the vote was their primary mission, and they “hoped to use the vote to transform the family by changing the unjust laws governing the conditions in which women conceived, bore and raised children.”<sup>133</sup> No matter what

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<sup>126</sup> *Id.* (emphasis added).

<sup>127</sup> ROSS & SOLINGER, *supra* note 51, at 9.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.* at 70.

<sup>133</sup> Reva Siegel & Stacie Taranto, *What antiabortion advocates get wrong about the women who secured the right to vote*, WASH. POST (Jan. 22, 2020, 3:00 AM), <http://www.washingtonpost.com/outlook/2020/01/22/what-antiabortion-advocates-get-wrong-about-women-who-secured-right-vote/> [http://perma.cc/HC6P-EY44].

their opinion on abortion was, justice for women to have control over their lives was at the forefront for suffragists. Reproductive justice was created to place important societal issues at the forefront of conversations about women's health.<sup>134</sup> As a movement, and as a concept, it recognizes that not all women and individuals have the same access to reproductive health care.

Lack of access to reproductive health care fuels the reproductive justice movement, and lack of access is also apparent in the right to vote. In the 2013 *Shelby County v. Holder* decision, the Supreme Court invalidated parts of the 1965 Voting Rights Act.<sup>135</sup> Specifically, "the Supreme Court invalidated a decades-old 'coverage formula' naming jurisdictions that had to pass federal scrutiny under the Voting Rights Act, referred to as 'preclearance,' in order to pass any new elections or voting laws."<sup>136</sup> The jurisdictions that had coverage "were selected based on their having a history of discrimination in voting."<sup>137</sup> While the ruling repealed the old coverage formula, the Court did not create a new test for coverage and "left it to Congress to come up with new criteria for coverage, which hasn't happened . . ."<sup>138</sup> As a result, "communities facing new discriminatory voting laws have had to file suits themselves or rely on Justice Department suits or challenges from outside advocates—sometimes after the discriminatory laws have already taken effect."<sup>139</sup> Not surprisingly, "[v]oter-identification laws . . . make voting harder especially for poor people, people of color, and elderly people . . ."<sup>140</sup>

Reproductive rights and the right to vote are not only synonymous with liberty, but with equality as well.<sup>141</sup> Voting, in turn, comments on public policy, where "*groups* of citizens who share common political preferences" come together and share their voice on a particular matter.<sup>142</sup> However, there have been longstanding issues with the right to vote because "when some groups [of citizens] have more opportunity than other groups to

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<sup>134</sup> See generally Loretta Ross, *Understanding Reproductive Justice: Transforming the Pro-Choice Movement*, 36 OFF OUR BACKS 14 (2006) (explaining the voids that reproductive justice helps to address).

<sup>135</sup> 570 U.S. 529, 557 (2013).

<sup>136</sup> Vann R. Newkirk II, *How Shelby County v. Holder Broke America*, ATLANTIC (July 10, 2018), <http://www.theatlantic.com/politics/archive/2018/07/how-shelby-county-broke-america/564707/> [<http://perma.cc/66ZH-ACGM>].

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> See Pamela S. Karlan, *Undue Burdens and Potential Opportunities in Voting Rights and Abortion Law*, 93 IND. L.J. 139, 143 (2018) ("[T]he right to vote is a fundamental public expression of equal citizenship and dignity.").

<sup>142</sup> *Id.*

affect election outcomes, this becomes a question of equality . . . .”<sup>143</sup> Similarly, equality is at the heart of reproductive rights: “Women can attain full equality in the public sphere only if they can control their fertility” and reproductive healthcare.<sup>144</sup>

In addition, both the right to reproduce and the right to vote are measured by an undue burden standard.<sup>145</sup> In *Burdick v. Takushi*,<sup>146</sup> “the Supreme Court upheld Hawaii’s refusal to permit write-in voting.”<sup>147</sup> In that case, “[t]he Court rejected the idea that ‘a law that imposes any burden upon the right to vote must be subject to strict scrutiny.’”<sup>148</sup> The Court declared that imposing a strict scrutiny requirement would be too restrictive on states “because every election law ‘will invariably impose some burden upon individual voters.’”<sup>149</sup> Therefore, the Court created a new standard:

A reviewing court must weigh “the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments” against “the precise interests put forward by the State as justifications for the burden imposed by its rule,” taking into consideration “the extent to which those interests make it necessary to burden the plaintiff’s rights.”<sup>150</sup>

After the Court’s decision in *Burdick*, the United States saw a rise in voting restrictions that created inequality in voting.<sup>151</sup> For example, in *Crawford v. Marion County Election Board*,<sup>152</sup> the Court upheld “Indiana’s voter ID law, which required voters to present currently valid, government-issued photo identification in order to cast a ballot that would be counted.”<sup>153</sup> The Court applied the *Burdick* balancing test, “concluding that the photo I.D. requirement was closely related to Indiana’s legitimate state interests in preventing voter fraud.”<sup>154</sup> The Court further reasoned that “[t]he slight burden the law imposed on voters’ rights did not outweigh these interests, which the Court characterized as ‘neutral and nondiscriminatory.’”<sup>155</sup> The Court,

<sup>143</sup> *Id.*

<sup>144</sup> *Id.* at 144.

<sup>145</sup> *Id.* at 140.

<sup>146</sup> 504 U.S. 428 (1992).

<sup>147</sup> Karlan, *supra* note 141, at 145.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.* at 145–46.

<sup>150</sup> *Id.* at 146.

<sup>151</sup> *Id.*

<sup>152</sup> 553 U.S. 181 (2008).

<sup>153</sup> Karlan, *supra* note 141, at 146.

<sup>154</sup> *Crawford v. Marion County Election Board*, OYEZ, <http://www.oyez.org/cases/2007/07-21> [<http://perma.cc/DU5Z-UDN6>] (last visited Feb. 22, 2020).

<sup>155</sup> *Id.*

in turn, moved away from strict scrutiny and moved toward a balancing test that burdened only certain individuals.<sup>156</sup>

The Court took a similar route in the area of abortion. Under its “undue burden” test, state regulations can survive constitutional scrutiny so long as they do not place a “substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus.”<sup>157</sup> In *Gonzalez v. Carhart*,<sup>158</sup> the “Court held that the plaintiffs had not ‘demonstrated that the Act would be unconstitutional in a large fraction of relevant cases.’”<sup>159</sup> The Court reasoned that the ban on partial-birth abortion did not impose an undue burden because it applies only to a specific method of abortion and not to abortion itself.<sup>160</sup> The Court stated that “in cases where the prohibited procedure was not necessary to preserve the health of the woman, the absence of a health exception would place no health-related burden on the woman” to obtain that abortion procedure.<sup>161</sup> The Court has made decisions based on these fundamental rights—decisions that acknowledge that some populations, by design, will be burdened.

As we celebrate the anniversary of the Nineteenth Amendment, it becomes more apparent that the right to vote is a reproductive justice issue. However, these issues do not impact everyone the same way, as “the people most impacted by restrictions on voting rights are the very same people most affected by anti-abortion laws—people of color, low-income individuals, the LGBTQ community, young people and immigrants.”<sup>162</sup> The affected class are bogged by both “voter suppression and lack of abortion access [which] intertwine to undermine the dignity and power of a large portion of the population.”<sup>163</sup>

According to Liz Chen, writing for the Center for American Progress, disenfranchisement has two effects: “it removes people from the political process, and then it denies them a voice on matters that directly affect their lives, including their ability to access reproductive

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<sup>156</sup> *Id.*

<sup>157</sup> *Planned Parenthood v. Casey*, 505 U.S. 833, 877 (1992).

<sup>158</sup> 550 U.S. 124 (2007).

<sup>159</sup> Karlan, *supra* note 141, at 149 (quoting *Gonzales*, 550 U.S. at 167–68).

<sup>160</sup> *See id.*

<sup>161</sup> *Id.*

<sup>162</sup> Nikita Mhatre, *Why the Right to Vote Is a Reproductive Justice Issue*, NAT'L PARTNERSHIP (Nov. 5, 2018), <http://www.nationalpartnership.org/our-impact/blog/general/why-the-right-to-vote-is-a-reproductive-justice-issue.html> [<http://perma.cc/GT7D-MEM7>].

<sup>163</sup> *Id.*

health care, make decisions about whether, when and how to parent, and ultimately shape the course of their lives.”<sup>164</sup>

The right to vote is more important now than ever, in order for individuals to retain bodily autonomy.<sup>165</sup> As we see that reproductive rights are directly tied to political climate over the years, voting is crucial to keep reproduction as a fundamental right. Further, reproductive justice and voting are tied together, as they are both interwoven with issues of social injustice.

## V. CONCLUSION

Women’s history is still being written. The right to vote for women is critical in an era where reproductive rights are under attack. Although women have come far since the Nineteenth Amendment was ratified in terms of power and autonomy, the power to vote can be the means to achieving reproductive justice. One person is one vote, but one vote can help create equal access to quality reproductive healthcare.

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<sup>164</sup> *Id.* (quoting Elizabeth Chen, *A Dual Disenfranchisement*, CTR. FOR AM. PROGRESS (Oct. 24, 2012), <http://www.americanprogress.org/wp-content/uploads/2012/10/DualDisenfranchisement1.pdf> [<http://perma.cc/P3UJ-MRHV>]).

<sup>165</sup> *See id.*